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INTERSTATE COMMERCE COMMISSION

RHODE ISLAND INDUSTRIAL FACILITIES CORPORATION

and

PROVIDENCE AND WORCESTER COMPANY

LEASE AGREEMENT

Dated as of January 1, 1974

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LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into as of the first day of January, 1974 by and between the Rhode Island Industrial Facilities Corporation, a public body corporate and agency of the State of Rhode Island created under the laws of Rhode Island (the "Corporation"), and the Providence and Worcester Company (the "Lessee"), a corporation organized and existing under and by virtue of the laws of the State of Delaware, party of the second part;

WITNESSETH:

WHEREAS, Chapter 37.1, Title 45 of the General Laws of Rhode Island 1956, as amended, known as the Rhode Island Industrial Facilities Corporation Act (the "Act") authorizes the establishment of the Rhode Island Industrial Facilities Corporation (the "Corporation") as a public body corporate and agency of the State of Rhode Island for the purpose of issuing its revenue bonds to defray the cost of acquiring, constructing, financing and leasing projects including railroad rolling stock and locomotives; and

WHEREAS, the Corporation is authorized to lease to others any projects so acquired, constructed, financed or leased with the proceeds of the revenue bonds and secure the payment of principal and interest on any bonds so issued by a pledge of the income and revenues derived from the lease of the project as well as a pledge of the proceeds of any sale of the project; and

WHEREAS, the Providence and Worcester Company (the "Lessee") a Delaware corporation authorized to do business as a railroad in Rhode Island and Massachusetts owns and operates a railroad in Rhode Island; and

WHEREAS, the Lessee has been induced to complete the acquisition of locomotives by the passage of legislation permitting the Corporation to acquire the Locomotives for lease to the Lessee and the commitment of the Corporation to effectuate such acquisition and lease; and

WHEREAS, the acquisition of certain locomotives will greatly aid the Lessee in the continued operation of its railroad in the State of Rhode Island; and

WHEREAS, pursuant to a resolution adopted on January 22, 1974, the Corporation has offered to acquire certain locomotives as a means of encouraging and facilitating industrial development by the expansion of railroad transportation facilities and to lease said locomotives to the Lessee; and

WHEREAS, pursuant to a resolution adopted on January 22, 1974, the Corporation has authorized the issuance of its Industrial Development Revenue Bonds to accomplish this purpose; and

WHEREAS, pursuant to a resolution adopted on January 22, 1974, the Corporation authorized and approved the execution and delivery of this Lease Agreement and the Indenture of Mortgage and Trust dated as of January 1, 1974, between the Corporation and the Trustee, and the issuance of its Industrial Development Revenue Bonds (1974 Providence and Worcester Company Project) in the aggregate principal amount of \$1,500,000 (the "Bonds");

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and of the mutual benefits, covenants and agreements herein expressed, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The following terms have the following meanings in this Lease Agreement.

"Act" means the Rhode Island Industrial Facilities Corporation Act (Title 45, Chapter 37.1 of the General Laws of Rhode Island, 1956) as amended to the date of this Lease Agreement.

"Authorized Corporation Representative" means such person at the time designated by written certificate furnished to the Lessee and the Trustee containing the specimen signature of such person and signed on behalf of the Corporation by its chairman or vice-chairman, to act in behalf of the Corporation. Such certificate shall designate an alternate or alternates. Any such person shall be satisfactory to the Lessee and shall be replaced promptly by the Corporation upon the written request of the Lessee.

"Authorized Lessee Representative" means such person, and his alternate or alternates, at the time designated by written certificate furnished to the Corporation and the Trustee containing the specimen signature of such persons and signed on behalf of the Lessee by the president or any vice president of the Lessee, to act on behalf of the Lessee. All notices and requests required or permitted to be given by Lessee hereunder shall be signed by an Authorized Lessee Representative.

"Bond Fund" means the Fund established by Section 501 of the Indenture.

"Bonds" means the Corporation's proposed \$1,500,000 aggregate

principal amount of Industrial Development Revenue Bonds (1974 Providence and Worcester Company Project) authorized to be issued pursuant to the terms and conditions of the Indenture.

"Corporation" means the Rhode Island Industrial Facilities Corporation and any successor thereof or thereto.

"Indenture" shall mean the Indenture of Mortgage and Trust dated of the date hereof by and between the Corporation and Rhode Island Hospital Trust National Bank as Trustee, pursuant to which the Bonds are to be authenticated and delivered, and any amendments and supplements thereto.

"Independent Counsel" means an attorney duly admitted to practice law before the highest court of any state and not an officer, director or full time employee of either the Corporation or the Lessee, or a firm of attorneys, a member of which is duly admitted to practice law before the highest court of any state and no member of which is an officer, director or full time employee of either the Corporation or the Lessee, in each case selected by the Corporation and acceptable to the Lessee and the Trustee (such acceptance not to be unreasonably withheld).

"Independent Engineer" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of Rhode Island and who is not and no member of which is an officer, director or employee of the Corporation or the Lessee.

"Lease Agreement" means this Lease Agreement as from time to time amended.

"Lease Term" means the duration of the leasehold estate created in the Lease Agreement as specified in Section 3.2.

"Locomotives" means five Model M-420-R 2000 h. p. diesel electric locomotives to be furnished by MLW-Worthington Limited of Montreal,

Quebec in accordance with a purchase agreement between the Lessee and MLW-Worthington Limited dated October 10, 1972 as modified by a purchase agreement dated December 21, 1972 and letter agreements dated December 10, 1973 and December 11, 1973 respectively together with any replacements, improvements, accessions, substitutions and additions acquired as provided in this Lease Agreement. The term "locomotive" means any one of the Locomotives.

"Lessee" shall mean Providence and Worcester Company, a corporation organized and existing under the laws of the State of Delaware and authorized to operate a railroad in the State of Rhode Island and the Commonwealth of Massachusetts, or its successors or assigns and any surviving, resulting or transferee corporation under this Lease Agreement in accordance with Section 5.4 hereof.

"Net Proceeds", when used with respect to any insurance or confiscation or requisition award, means the gross proceeds from the insurance or confiscation or requisition award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

"Outstanding" when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (a) any Bond cancelled by the Trustee or proven to the satisfaction of the Trustee to have been cancelled by the Issuer on or before said date, (b) any Bond for payment or redemption of which moneys equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall have theretofore been deposited with the Trustee in trust (whether upon or prior to maturity or the redemption date of such Bond)

and, except in the case of a Bond to be paid at maturity, of which notice shall have been given or provided for in accordance with Article III, and (c) any Bond in lieu of or in substitution for which another bond shall have been authenticated and delivered pursuant to Article II or Section 304.

"Permitted Encumbrances" means, as of any particular time,

- (i) liens for taxes not then delinquent,
- (ii) this Lease Agreement and the Indenture, and
- (iii) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right in respect thereof if payment is not yet due and payable or is being contested in good faith.

"Project Fund" means the Fund established by Section 402 of the Indenture.

"Redemption Price" means, with respect to any Bond, the principal amount thereof plus the applicable premium, if any, payable upon redemption thereof and any additional or special premium payable pursuant to such Bond and the Indenture.

"Sinking Fund Installments" shall have the meaning given thereto in the Indenture.

"Tax Incidence Date" means the date upon which an event occurs which causes interest on the Bonds (other than Bonds held by the Lessee or any related person) to be included in the gross income of the recipient thereof for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code.

"Trustee" means Rhode Island Hospital Trust National Bank, and its successor or successors hereafter appointed in the manner provided in the Indenture.

Except where the context otherwise requires, words imparting the singular number include the plural number and vice versa and words

impacting persons include firms, associations and corporations.

Any terms not otherwise defined herein, unless a different meaning clearly appears from the context, have the same meanings in this Lease Agreement as those terms are given in the Indenture.

ARTICLE II
ACQUISITION OF LOCOMOTIVES

Section 2.1. Acquisition of Locomotives. 1. As promptly as practicable after receipt of the proceeds of sale of the Bonds referred to in Section 2.3 hereof and out of said proceeds of sale, the Corporation will subject to the provisions of Section 2.2 hereof, cause to be acquired for use of the Lessee the Locomotives. The Lessee agrees prior to the delivery of the Bonds to exercise the option to purchase the remaining Locomotives under the purchase agreement with the vendor, MLW-Worthington Limited dated October 10, 1972, as amended. The Lessee further agrees to cause title to the Locomotives to be conveyed to the Corporation.

2. The Lessee covenants that it will obtain or cause to be obtained all necessary approvals, permits and other certifications and authorizations from any and all governmental agencies in connection with the acquisition of the Locomotives.

3. The Corporation will extend to the Lessee all warranties received by the Corporation in connection with the manufacture and delivery of the Locomotives. If requested, the Corporation shall execute and deliver appropriate instruments to the Lessee to accomplish the foregoing.

4. The Lessee covenants that it will take such action and institute such proceedings as shall be necessary to cause and require all vendors and suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitations, the correction of any defective work and replacement and repair of defective equipment and parts, and the Corporation agrees that the Lessee may, from time to time, in its own name, or in the name of the Corporation, take such action as may be necessary or advisable, as determined by the Lessee, to insure the acquisition of equipment in accordance with any applicable contract per-

taining thereto, and to correct, replace and repair defects in the Locomotives, with all costs and expenses incurred in connection with any and all of the foregoing to be borne by the Lessee, subject to reimbursement, however, as part of the costs of the acquisition of the Locomotives.

5. Upon delivery of each locomotive to the Lessee for the account of the Corporation at such location as shall from time to time be specified by the Lessee, the Lessee shall furnish to the Corporation a receipt stating that said locomotive has been delivered to the Lessee pursuant to this Lease Agreement.

Section 2.2. Completion by Lessee. In the event that moneys in the Project Fund are not sufficient to pay the costs of the acquisition of the Locomotives in full, the Lessee shall at its own expense and without any right of reimbursement in respect thereof pay that portion of such costs, as may be in excess of said moneys.

Section 2.3. Issuance of Bonds. The Corporation has concurred with the execution and delivery hereof sold and delivered the Bonds in the principal amount of \$1,500,000 under and pursuant to a resolution adopted by the Corporation on January 22, 1974 authorizing the issuance of the Bonds and under and pursuant to the Indenture. The proceeds of sale of the Bonds remaining after the deposit in the Bond Fund of an amount equal to interest accrued on the Bonds to the date of delivery thereof shall be deposited in the Project Fund.

Section 2.4. Disbursements from the Project Fund. The Corporation will as hereinafter provided authorize and direct the Trustee to use the monies in the Project Fund for the following purposes, only, without duplication of amounts:

- (a) Payment of the initial or acceptance fee of the Trustee, legal and accounting fees and expenses and printing and en-

graving costs, and all other costs and expenses incurred in connection with the preparation, authorization, sale and issuance of the Bonds, including underwriting and legal fees and commissions, and the preparation, execution and filing of the Indenture and this Lease Agreement and all other documents in connection therewith or herewith.

(b) Payment of, or reimbursement of the Lessee and the Corporation in full for all advances and payments made by them or either of them or for their accounts at any time prior to or after the delivery of the Bonds for, expenditures in connection with the preparation of plans and specifications for the Locomotives (including any preliminary study or planning); the cost of acquisition of the Locomotives; and miscellaneous expenses incidental to any of the foregoing items.

(c) Payment of the expenses, if any, for supervision and other work done by officers or employees of the Lessee in connection with the preparation of plans and specifications for and acquisition of the Locomotives, provided that such expenses are to be treated on its books by Lessee as capital expenditures in accordance with generally accepted accounting principles applied on a consistent basis.

(d) Payment of expenses incurred with approval of the Lessee in seeking to enforce any remedy against any vendor or supplier relating to the acquisition of the Locomotives.

(e) Payment of any other costs and expenses relating to the acquisition of the Locomotives or sale of the Bonds that may be approved in writing by the Authorized Corporation Representative and the Authorized Lessee Representative.

(f) Payment into the Bond Fund of \$33,500.00 representing interest costs to be paid on the Bonds during the period of

acquisition of the Locomotives.

Such payments and reimbursements shall be made by the Trustee only upon receipt of a written requisition for such payment signed by the Authorized Corporation Representative (or his alternate) and the Authorized Lessee Representative (or his alternate) certifying that:

(1) An obligation in the stated amount has been incurred or paid by or on behalf of the Corporation or the Lessee, describing in reasonable detail the purpose of the payment and to whom such obligation is owed, accompanied by appropriate evidence of such obligation; and

(2) They have no notice of any vendor's, mechanic's, or other liens or right to liens, chattel mortgages or conditional sales contracts, or other contracts or obligations which should be satisfied or discharged before such payment is made;

and in the case of a payment or reimbursement for the cost of acquisition of one or more locomotives, upon the further receipt of an opinion of counsel satisfactory to the Trustee that, subject to the payment in full of the purchase price therefor and except as otherwise contemplated by this Lease Agreement and the Indenture, the Corporation has clear and marketable title to such locomotives, provided, however, that the Trustee may advance monies from the Project Fund to the Corporation or the Lessee, as agent of the Corporation, for by the Corporation or such agent in making any such payments referred to in subsections (b), (c), and (e) of this Section 2.4, if there is furnished to the Trustee an agreement satisfactory to the Trustee, executed by the Lessee, indemnifying the Trustee against any loss occasioned thereby.

Any balance remaining in the Project Fund shall be paid into the Bond Fund as provided in Section 404 of the Indenture.

Section 2.5. Numbering and Index of Locomotives. The Locomotives delivered to the Lessee will be numbered with the Lessee's road numbers assigned thereto. At all times after such delivery, the Lessee will cause the Locomotives to bear such numbers borne by such Locomotive at the time of its delivery hereunder; provided, however, that the Lessee may change the numbers borne by the Locomotive if prior thereto the Lessee shall have filed with the Corporation a statement of the new numbers to be substituted therefor and the Lessee shall have filed, deposited, registered and recorded such statement wherever this Lease Agreement shall have been filed, deposited, registered or recorded. The Lessee will keep on file an index of the Locomotives.

Section 2.6. Identification Marks. On each side of each locomotive unit of the Locomotives there will be marked by a metal plate or otherwise following legend in letters not less than one inch in height:

"RHODE ISLAND INDUSTRIAL FACILITIES CORPORATION
OWNER AND LESSOR."

If during the continuance of this Lease Agreement any such marking shall at any time be removed, defaced or destroyed on the Locomotives then subject to this Lease Agreement, the Lessee shall immediately cause such marking to be restored or replaced. The Lessee shall not allow the name of any person, association or corporation to be placed on the Locomotives as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Corporation; but the Lessee may letter the Locomotives with the names or initials or other insignia customarily used by the Lessee on its locomotives of the same or a similar type for convenience of identification of the right of the Lessee to use and operate the Locomotives under this Lease, and may also letter the Locomotives with the name or initials or other insignia of the Corporation.

ARTICLE III

LEASE OF THE LOCOMOTIVES AND RENTAL PROVISIONS

Section 3.1. Lease of the Locomotives. The Corporation hereby leases to the Lessee and the Lessee hereby leases from the Corporation the Locomotives for and during the term hereinafter provided and upon and subject to the terms and conditions hereinafter set forth.

Section 3.2. Duration of Term. The term of this Lease Agreement shall commence as of January 1, 1974, and unless terminated or extended as provided in this Lease Agreement shall expire on January 1, 1989, or if any Bonds are outstanding on January 1, 1989, on the first day thereafter upon which no Bonds are outstanding.

The Corporation agrees to permit the Lessee to remain in sole and exclusive possession of the Locomotives immediately upon the commencement of the Lease Term. The Corporation covenants and represents that it has full right and lawful authority to enter into this Lease Agreement for its full term, including any extension of the term, and to grant the options to purchase contained in this Lease Agreement. So long as the Lessee shall duly perform all its obligations under this Lease Agreement, the Lessee shall have the right to have, hold and enjoy peaceful, quiet and undisputed possession of the Locomotives during the Lease Term, subject only to the matters specifically herein excepted, and the Corporation shall take all appropriate action requested by the Lessee to that end.

Section 3.3. Rental Provisions; Pledge of Agreement and Rent.

(a) The Lessee covenants to make semiannual rental payments during the

term of this Lease Agreement not later than 15 days prior to each interest payment date for the Bonds. In the event a rental payment date falls on a non-banking day of the Trustee, the rental payment involved shall be due and payable at the time of opening for business on the next succeeding day that is a banking day of the Trustee. The amount of each such rental payment shall be the sum of (i) the interest due on the Outstanding Bonds on such interest payment date, (ii) the principal amount, if any, of the Bonds then Outstanding due (otherwise than by call for redemption) on such interest payment date and (iii) the Sinking Fund Installment, if any, due on such interest payment date as provided in the Indenture, provided that such rental payments shall, to the extent the Lessee elects, be reduced by (1) the amount of all monies then held by the Trustee in the Bond Fund to the extent not previously the basis for such reduction or then held for the payment of Bonds called for optional redemption, plus (2) as and to the extent Bonds theretofore redeemed, purchased by or delivered to the Trustee are permitted by Section 507 of the Indenture to be credited against Sinking Fund Installments, the principal amount of such Bonds. If at any interest payment date, the balance in the Bond Fund (including the rental payment as aforesaid) is not sufficient to pay such total amount due on such date, the Lessee agrees to pay to the Trustee, on the day prior to such date, rentals under this Agreement equal to the amount of such deficiency.

(b) The Corporation hereby notifies the Lessee and the Lessee acknowledges that all the Corporation's right, title and interest in this Lease Agreement, including the rental provided for in this Section 3.3 has been pledged by the Corporation as security for the Bonds, and in furtherance of said pledge the Corporation hereby unconditionally assigns, and directs Lessee to make, and the Lessee hereby covenants to make, such rental payments directly to the Trustee for deposit in the Bond Fund in accordance with the Indenture.

(c) Lessee's election to deliver Bonds to the Trustee in satisfaction of Sinking Fund Installments under the Indenture, or reduce rental payment by the principal amount of Bonds redeemed or purchased by or delivered to the Trustee, shall be exercised by Lessee's giving to the Trustee written notice of such election accompanied by the delivery of all such Bonds not theretofore delivered to the Trustee, with all unmatured coupons attached, on or before the 45th day preceding the date such Bonds are to be redeemed

(d) There is expressly reserved to the Lessee the right, and the Lessee is authorized and permitted, at any time it may choose, to prepay, by deposit into the Bond Fund, all or any part of the rents payable under this Section 3.3, and the Corporation agrees that the Trustee may accept such prepayments of rents when the same are tendered by the Lessee.

(e) After all Bonds have been retired and all interest and applicable premium, if any, due thereon have been paid or provision for such retirement and payment has been made in accordance with the Indenture, and after payment in full of the fees, charges and expenses of the Trustee and paying agents and any other amounts required to be paid hereunder or under the Indenture, any excess moneys in the Bond Fund from whatever source derived will be paid to the Lessee as an adjustment of rentals. This paragraph shall survive the termination or expiration of this Lease Agreement for any reason.

Section 3.4. Obligation of Lessee Unconditional. So long as any Bonds shall be Outstanding,

(a) The obligation of the Lessee to pay the rent as provided in Section 3.3 of this Lease Agreement, and to make all other payments required by this Lease Agreement, and to maintain the Locomotives in accordance with Section 4.1 of this Lease Agreement, shall be absolute and unconditional, irrespective of any defense or any

rights of set off, recoupment or counterclaim it might otherwise have against the Corporation including but not limited to any non-delivery of any or all of the Locomotives

(b) The Lessee will not suspend or discontinue any such payment or terminate this Lease Agreement (other than such termination as is provided for in this Lease Agreement) for any cause including, without limiting the generality of the foregoing, failure of consideration, failure of title, or commercial frustration of purpose, or any damage to or destruction of or condemnation or confiscation or requisition or taking of use of or title to any locomotive or all of the Locomotives under the exercise of the power of eminent domain or otherwise by any competent governmental authority or by any person, firm or corporation acting under governmental authority, or any change in the tax or other laws of the United States, the State of Rhode Island or any political subdivision of either thereof, or any failure of the Corporation to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement.

The preceding paragraph (b) shall not be construed to release the Corporation or the Trustee from the performance of any of their agreements contained in this Lease or, except to the extent provided in this Section 3.4, prevent or restrict the Lessee from asserting any rights which it may have against the Corporation, the Trustee or any other persons under this Lease Agreement or under any provision of law or prevent or restrict the Lessee, at its own cost and expense and in its name or in the name of the Corporation, from prosecuting or defending any action or proceeding against or by third parties or taking any other action to secure or protect its right of possession and use of the Locomotives and its or their other rights under this Lease Agreement.

ARTICLE IV

MAINTENANCE, MODIFICATIONS, ADDITIONAL RENTS AND
TAXES, INSURANCE, AND DAMAGE TO THE LOCOMOTIVES

Section 4.1. Maintenance and Modifications of Locomotives by Lessee. (a) The Lessee agrees that during the Lease Term it will at its own expense maintain, preserve and keep the Locomotives in good and safe operating order and condition and in good repair and shall make, from time to time, all replacements and repairs thereto (whether ordinary, extraordinary, foreseen or unforeseen) as may be required to maintain and operate the Locomotives. Except as otherwise provided in this Lease Agreement, the Lessee shall not, however, part with possession of, or suffer or allow to pass out of its possession or control the Locomotives even when necessary to satisfy the requirements of this Section 4.1 without prior written notice to the Authorized Corporation Representative. In no event shall the Lessee suffer or allow the Locomotives to pass outside the borders of the continental United States without the prior written consent of the Authorized Corporation Representative. In its use of the Locomotives, the Lessee will at all times comply with all applicable safety laws, and rules and regulations thereunder, provided, however, the Lessee shall not be required to comply with any such laws (either statutory or common law), rules or regulations so long as the Lessee shall contest in good faith the validity, existence or applicability thereof.

(b) The Lessee may from time to time, in its sole discretion and at its own expense, make any additions, modifications or improvements to the Locomotives, including installation of additional parts or equipment to the Locomotives and to remove same, as it may deem desirable for its business purposes; provided that all such additions, modifications, improvements and removals do not materially impair the overall operating efficiency of the Locomotives.

(c) The Lessee will not permit any materialmen's, mechanics' or similar liens to be established or remain against the Locomotives; provided that if the Lessee shall first notify the Trustee of its intention so to do, the Lessee may in good faith contest any such lien, and may permit the items so contested to remain unpaid during the period of such contest unless the Corporation or the Trustee shall notify the Lessee that, in the opinion of Independent Counsel, as the result of such nonpayment the Locomotives or any parts thereof will be subject to loss or forfeiture, in which event the Lessee shall promptly pay the same. The Corporation will cooperate fully with the Lessee in any such contest.

Section 4.2. Additional Rents; Taxes; Payments in Lieu of Taxes; Annual Administrative Fee, Etc. (a) The Corporation acknowledges that under present law the Locomotives leased hereby will not be subject to taxation by the State of Rhode Island or any county, municipality or other levying body so long as the Locomotives are owned by the Corporation and that this factor, among others, materially induced the Lessee to enter into this Lease Agreement. The Corporation covenants that it will cooperate with the Lessee in resisting any taxes on the Locomotives if so requested by the Lessee. The Lessee nevertheless agrees to pay when due as additional rental (i) the sums required by the Act to be paid to the State of Rhode Island and to the county, City, town and any other political subdivision authorized to levy taxes in respect of the Locomotives and (ii) all taxes and assessments, general and special, if any, levied and assessed on the Locomotives foreseen or unforeseen, nonpayment of which would subject the Locomotives or any locomotive unit thereof to loss or forfeiture (all of which sums required to be paid by the Act, taxes, assessments, charges and impositions are in this Section called "impositions"). Any imposition relating to a fiscal period of any taxing authority part of

which extends beyond the term of this Lease Agreement shall be apportioned as of the expiration of such term. The Corporation shall promptly forward to the Lessee any notice, bill or other advice received by the Corporation concerning any imposition. the extent required by law, the Lessee shall also pay to the city, town, school district or other political subdivision or special district having taxing powers, in which the Locomotives are located, a payment in lieu of taxes which shall equal the taxes on personal property which such Lessee would have been required to pay, had it been the owner of such property during the period for which such payment is made and under no circumstances shall the Corporation or its projects, properties, moneys or bonds be obligated, liable or subject to any lien of any kind for the enforcement, collection or payment thereof.

(b) The Lessee shall not, however, be required to pay any impositions so long as the Corporation (or the Lessee, to the extent permitted by law) shall contest the validity or amount of its or the Corporation's obligation to pay the same, unless by the Lessee's failure so to pay such impositions the Locomotives or any locomotive unit thereof would be subject to loss or forfeiture, in which event such payment shall be made by Lessee and the Lessee shall have the right to pursue its and the Corporation's claims for refund thereof. The Corporation agrees to cooperate with the Lessee in connection with any administrative or judicial proceedings for determining the validity or amount of any imposition, and the Corporation hereby appoints and designates, and reserves the right in and for, the Lessee in its own name or in the name of the Corporation as it may elect, to take action which the Corporation may lawfully take in respect of impositions and matters relating thereto; provided, however, that all costs and expenses of the Corporation thereby incurred at the request of the Lessee or by reason of any such action taken by the Lessee in behalf of the Corporation shall be borne and paid by the Lessee.

(c) The Corporation acknowledges that under present law the acquisition, maintenance and repair of the Locomotives by the Corporation will not be subject to Rhode Island sales and use taxes. Any and all Rhode Island sales and use taxes in connection with the acquisition, maintenance and repair of the Locomotives, including without limitation of the generality of the foregoing, the remodeling thereof and the making and installing of improvements, additions, substitutions, replacements and alterations on and to the Locomotives (whether by the Lessee or its contractors, subcontractors or other suppliers) shall be reimbursed by the Corporation to the Lessee, by payment into the Bond Fund, as and to the extent that such taxes are refunded to the Corporation by the State of Rhode Island. The Corporation, at the request and expense of the Lessee, agrees from time to time to make due application for such refund, and to cooperate with the Lessee in taking all such further steps as may be required to procure such refund.

(d) The Lessee agrees to pay to the Corporation an administrative fee in the amount of \$1,000 on the effective date of this Lease Agreement and agrees to make subsequent payments of the amount of \$1,000 on the same day and month in each succeeding calendar year throughout the Lease Term.

Section 4.3. Insurance. (a) The Lessee shall throughout the Lease Term keep the Locomotives continuously insured against loss or damage by fire, or other casualty under a standard form of commercial all-risk policy subject only to the normal and customary exceptions applicable to railroad rolling stock (including locomotives). Such insurance shall at all times be in an amount such that the proceeds of such insurance in the event of a total loss shall be equal to not less than 80% of the full insurable value thereof, less \$10,000 in the case of any one locomotive. All such insurance shall be maintained with responsible insurance companies selected by the Lessee and authorized to do an insurance

business in each state or other jurisdiction in which the Locomotives may be located, may be effected under a blanket insurance policy of the Lessee having at least the coverage required by this Section 4.3 and may be written with deductible amounts comparable to those on similar policies carried by other railroad companies of similar size and character. All policies evidencing such insurance shall provide that (i) payment of losses shall be made to the Trustee so long as any Bonds are outstanding, and thereafter to the Lessee and the Corporation as their respective interests may appear, (ii) the insurance provided thereby may not be cancelled or materially altered without at least 10 days' written notice to the Lessee and the Trustee, and (iii) all claims for loss covered thereby shall be adjusted by the Lessee. The Net Proceeds of such insurance shall be applied as provided in Section 4.5.

(b) The Lessee agrees that it will carry public liability insurance in minimum amounts of \$2,000,000 for the death of or bodily injury to one person and \$2,000,000 for death or bodily injury in connection with each occurrence and \$1,000,000 for property damage in connection with each occurrence subject to a deductible of not more than \$25,000 in each case, naming the Corporation and Lessee as insureds, as their respective interests may appear. All such insurance shall be maintained with responsible insurance companies selected by the Lessee and authorized to do an insurance business in each state or other jurisdiction in which the Locomotives may be located may be effected under a blanket insurance policy of the Lessee having at least the coverage required and may be written with deductible amounts up to \$25,000.

The Net Proceeds of the public liability insurance carried pursuant to this paragraph (b) shall be applied to the extinguishment or satisfaction

of the liability with respect to which such insurance proceeds may be paid.

(c) Duplicate copies of all policies of insurance maintained pursuant to paragraph (a) and (b) of this Section 4.3, or certificates evidencing such insurance, shall be furnished to the Trustee.

(d) The Corporation agrees that, if and to the extent that the Lessee shall request, it will cooperate with the Lessee in connection with any action to be taken under or in respect of the insurance above provided for, and the Corporation, to the extent that it may lawfully do so, hereby appoints and designates the Lessee, in its own name or in the name of the Corporation, as the Lessee may elect, to take all action which the Corporation may lawfully take in respect of such insurance and all matters relating thereto. All premiums and all costs and expenses incurred by reason of any action taken by the Lessee in respect of such insurance and all costs and expenses of the Corporation and the Trustee incurred at the request of the Lessee or by reason of any action taken in respect of such insurance by the Lessee in behalf of the Corporation or the Trustee, shall be borne by the Lessee, and the Lessee shall be entitled to any insurance premium refund or dividend received by the Corporation or the Trustee.

No claim shall be made, and no suit or action at law or in equity shall be brought by the Corporation or anyone claiming by, through or under the Corporation against the Lessee for any damage to the Locomotives, however caused, to the extent the same is covered by insurance as in this Section required, provided that nothing in this paragraph shall diminish the Company obligations under Section 4.6 hereof.

Section 4.4. Liens and Compliance with Law. The Lessee will not permit to remain, and will promptly discharge at its cost and expense, all liens, charges and encumbrances on the Locomotives or any locomotive thereof, other than Permitted Encumbrances, and other than any lien, charge

encumbrance resulting solely from (a) any action or failure to act by the Corporation or by the Trustee in its capacity as Trustee under the Indenture or (b) any liability or obligation on the part of the Corporation or the Trustee which the Lessee is not obligated by this Lease Agreement to assume.

The Lessee shall at all times comply with all laws, ordinances, rules and regulations affecting the Locomotives or their use which are binding on the Lessee in all jurisdictions in which its operations involving the Locomotives may extend and in the event that such laws, ordinances, rules or regulations require the alteration of the Locomotives, the Lessee will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Lessee may in good faith (and after delivery to the Corporation of a certificate of the Authorized Lessee Representative stating the facts with respect thereto) contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Corporation, materially affect the property or rights of the Corporation. The Lessee shall also either comply with all provisions of all former instruments of record affecting the Locomotives which are binding on the Lessee or effectively stay the enforcement of the provision or have the provision removed.

Section 4.5. Damage, Destruction, Condemnation, Confiscation or Requisition of the Locomotives. (a) In the event that all or any part of any locomotive or all of the Locomotives shall be lost, damaged or destroyed from any cause whatsoever, or in the event of the condemnation or confiscation or requisition or taking of use of or title to any locomotive or all of the Locomotives under the exercise of the power of eminent domain or otherwise by any competent governmental authority or by any person, firm or corporation acting under governmental authority, the Lessee

shall be obligated to continue to make the rental payments and other payments required hereunder, and shall either (1) repair, restore or replace the Locomotives or any locomotive or any part thereof, with equipment, locomotives or parts similar thereto (herein called "Replacements") so that the operating efficiency of the locomotive or Locomotives shall not be materially impaired or (2) if permitted by Section 8.1, exercise its option to purchase the Locomotives.

(b) The Net Proceeds from any insurance or confiscation or requisition award with respect to the Locomotives shall be deposited in a special fund (herein called "Special Fund") to be held by the Trustee and either (1) applied to pay for the cost of making Replacements or to reimburse Lessee for payment therefor from time to time in the same manner as disbursements are provided to be made from the Project Fund or (2) if purchase of the Locomotives is then permitted and the Lessee exercises its option to purchase the Locomotives, transferred to the Bond Fund and applied against payment of the purchase price of the Locomotives.

(c) If Lessee makes Replacements as hereinabove provided,

(1) Any surplus of such Net Proceeds remaining after the completion of all payments for such Replacements shall be deposited in the Bond Fund.

(2) The Lessee will pay any cost of Replacements in excess of the amount of the Net Proceeds.

(3) Such Replacements shall be deemed a part of the Locomotives as if specifically described herein.

Section 4.6. Advances by Corporation or Trustee. In the event the Lessee fails to perform any of its obligations under this Article IV, the Corporation or the Trustee, after first notifying the Lessee, may (but shall not be obligated to) perform the same, and all amounts advanced therefor by the Corporation or the Trustee, after deducting therefrom the Net Pro-

ceeds of any insurance or confiscation or requisition award available therefor, shall become additional rent immediately due and payable by the Lessee to the Corporation with interest thereon at the rate of 8% per annum, from the date advanced.

Section 4.7. Substitutions. The Lessee may from time to time substitute one or more locomotives for any of the Locomotives provided each such substitute locomotive shall have a market value and utility not less than the locomotive for which it is substituted. The cost thereof shall be paid by the Lessee and the substitute locomotive or locomotives shall be the property of the Corporation and the Lessee shall deliver to the Corporation appropriate documents as may be necessary to convey title of such substitute locomotive or locomotives to the Corporation. **The locomotive or locomotives so substituted for shall be conveyed by the Corporation to the Lessee.**

ARTICLE V
PARTICULAR COVENANTS

Section 5.1. No Warranties by Corporation; Patent Indemnity.

(a) The Corporation makes no warranties or representations, either expressed or implied, as to the fitness, design or condition of, or as to the quality of the material, equipment or workmanship in, or as to the conformity to the specifications of, the Locomotives accepted by Lessee hereunder or as to any patent features thereof or as to the title thereto or as to the interest therein of Lessor, it being agreed that all of such risks as between the Corporation and Lessee are to be borne by Lessee.

(b) Lessee hereby agrees to indemnify, reimburse and hold the Corporation and any person in whom title to the Locomotives or any locomotive unit thereof may be vested and any assignee of any interest in this Lease Agreement harmless from any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Corporation or any such person or assignee because of the use in or about the construction or operation of the Locomotives or any locomotive unit thereof of any design, article or material supplied or constructed by or furnished by Lessee or required by the specifications which infringes or is claimed to infringe on a patent or other right.

Section 5.2 Use of the Locomotives. The Lessee agrees and covenants to use the Locomotives in, and only in, freight service on its main line extending from Providence, Rhode Island to Worcester, Massachusetts via Valley Falls, Rhode Island, being a distance of 43.4 miles, on its branch line extending from East Providence, Rhode Island

being a distance of 6.3 miles and on a connecting line from Providence, Rhode Island to East Providence, Rhode Island, through the Providence-East Providence Tunnel and on any other track over which the Lessee may from time to time be authorized to operate or over which the Locomotives may operate in the ordinary course of Lessee's business. This agreement and covenant as to the use of the Locomotives is the essence of this Lease Agreement, and upon application to any court of equity having jurisdiction in the premises the Corporation shall be entitled to a decree against the Lessee requiring the specific performance thereof. The Lessee shall maintain complete and adequate records of the type customarily kept by railroad corporations as to the use of the Locomotives and shall make such records available for examination by the Corporation within three business days after receiving from the Authorized Corporation Representative a written request therefor.

Section 5.3. Inspection of the Locomotives; Annual Status Certificate. (a) The Lessee agrees that the Corporation, the Trustee and their, or either of their, duly authorized agents shall have the right, but shall be under no duty, to examine and inspect the Locomotives at such reasonable times as it may request. The Lessee further agrees that the Corporation and its duly authorized agents shall have such rights of access to the Locomotives as may be reasonably necessary to cause to be completed the proper maintenance or repair and restoration of the Locomotive in the event of failure by the Lessee to perform its obligations under Article IV hereof.

(b) The Lessee covenants and agrees to furnish to the Corporation on each July 1st during the continuance of this Lease Agreement, a certificate of the Authorized Lessee Representative stating (1) the description and numbers of the Locomotives then covered hereby and showing the

Locomotives are then in actual service, (2) the description and numbers of any locomotive unit of the Locomotives that may have become lost, destroyed or irreparably damaged, confiscated or requisitioned since the date of the last preceding statement (or the date of this Lease Agreement in the case of the first such statement), and (3) the description and numbers of any locomotive unit of the Locomotives then undergoing repairs, other than running repairs, or then withdrawn from use for repairs other than running repairs or for required state or Federal inspection, and stating that in the case of the Locomotives or any locomotive unit thereof repainted or repaired since the date of the last preceding statement (or the date of this Lease Agreement, in the case of the first statement) the markings required by Section 2.6 hereof have been preserved, or that the Locomotives or any locomotive unit thereof when repainted or repaired have been marked as required thereby. The Lessee will cause any Replacements as defined in Section 4.6 hereof to be marked as provided in Section 2.6 hereof, and, if the same type as the locomotive unit being replaced, to be numbered with the same number as such replaced locomotive unit.

Section 5.4. Corporation's Authority; Covenant of Quiet Enjoyment

The Corporation covenants and agrees that it has full right and lawful authority to enter into this Lease Agreement for the full term hereof, including the right to grant the options to purchase herein contained, and that so long as the Lessee shall pay the rent and all other sums payable by it under this Lease Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it, the Lessee shall have, hold and enjoy, during the Lease Term, peaceful, quiet and undisputed possession of the Locomotives, and the Lessee shall have the right from time to time to take all necessary action to that end.

Section 5.5. Lessee To Maintain its Corporate Existence; Conditions Under which Exceptions Permitted; Qualifications. (a) The Lessee agrees that during the Lease Term it will maintain its corporate existence,

will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; provided, that the Lessee may consolidate with or merge into another corporation, or permit one or more other corporations to consolidate with or merge into it or sell or otherwise transfer to another corporation all or substantially all of its assets as an entirety and thereafter dissolve or reincorporate under the laws of another state, if the surviving, resulting or transferee corporation, as the case may be, (i) is the Lessee, or (ii) assumes in writing all of the obligations of the Lessee herein, and qualifies to do business as a railroad in the State of Rhode Island and the Commonwealth of Massachusetts and has a net worth after such consolidation, merger, sale or transfer of not less than that of the Lessee prior to such consolidation, merger, sale or transfer.

(b) The Lessee warrants that it is and throughout the Lease term it will continue to be duly qualified to do business as a railroad in the State of Rhode Island and the Commonwealth of Massachusetts.

Section 5.6. Release and Indemnification Covenants and Approval

The Lessee releases the Corporation from, and agrees that the Corporation shall not be liable for and to hold the Corporation from, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause (other than the negligence of the Corporation, its officers, agents, servants and employees) pertaining to the acquisition of the Locomotives or ownership or use thereof; provided, that the indemnity provided in this section shall be effective only to the extent of any loss that might be sustained by the Corporation in excess of the Net Proceeds received from any insurance carried with respect to the loss sustained. The Corporation shall forthwith give notice to Lessee of any claim, suit, action or proceeding to which this

indemnity relates, and Lessee shall have the exclusive right to control the defense or settlement thereof.

Section 5.7. Approvals by Lessee. Whenever under the provisions of this Lease Agreement the approval of the Lessee is required, such approval shall be given by the Authorized Lessee Representative unless otherwise specified in this Lease Agreement and the Corporation shall be authorized to act on any such approval or request and the Lessee shall have no claim against the Corporation as a result of any such action taken.

Section 5.8. Financial Statements and Certificates. The Lessee agrees that it will furnish to the Trustee and the Corporation a copy of all financial statements and other reports which Lessee furnishes to its stockholders generally and a certificate of an Authorized Lessee Representative to the effect that Lessee is not in default hereunder, annually within 120 days after the end of each fiscal year of Lessee.

Section 5.9. Covenant by Lessee as to Compliance with Indenture. The Lessee covenants and agrees that it will comply with the provisions of the Indenture with respect to the Lessee and that the Trustee shall be entitled to exercise the powers, duties and obligations vested in the Trustee by the Indenture.

Section 5.10. Covenant by Corporation as to Compliance with Indenture. The Corporation covenants and agrees that it will comply with the provisions of the Indenture with respect to the Corporation, and will exercise its powers, rights and privileges under the Indenture as from time to time requested by Lessee in accordance with law and the Indenture.

Section 5.11. Compensation and Expenses of Trustee, Registrar and Paying Agents. The Lessee shall, to the extent not paid out of the proceeds of the Bonds, upon demand pay reasonable compensation to the Trustee for its services under or in connection with enforcement of the Indenture under this Lease Agreement, and all reasonable actual out-of-pocket expenses

(including counsel fees) reasonably incurred by the Trustee in performing duties thereunder or hereunder or the enforcement hereof or thereof, including but not limited to expenses incurred in purchasing any Bonds or making any investments in accordance with the Indenture. The Lessee shall also pay the reasonable compensation and reasonable out-of-pocket expenses of any other registrar or paying agent for the Bonds and reasonable out-of-pocket expenses of the Corporation (including counsel fees and reasonable per diem allowance for services of the officers of the Corporation) in connection with the performance of duties of the Corporation under the Lease Agreement, the Indenture and the authorization, execution, delivery and sale of the Bonds pursuant to resolutions adopted by the Corporation on January 22, 1974.

Section 5.12. Covenants with Respect to Use of Bond Proceeds.

Pending application of amounts in the Project Fund, any Special Fund and the Bond Fund for the purposes for which such Funds are established the monies therein shall be invested by the Trustee as directed by the Authorized Lessee Representative in accordance with the Indenture. Lessee covenants with the Corporation, with the Trustee and with each holder of any Bonds or interest coupons appertaining thereto, that it will never cause Bond proceeds to be so used as to result in the loss of exemption of interest thereon from Federal income taxation pursuant to Section 103 of the Internal Revenue Code of 1954 (except during any period while such Bond or coupon are held by a person referred to in Section 103 (c)(7) of said Code). Lessee further agrees to file with the United States Internal Revenue Service or other authorized governmental agency any and all statements or other instruments if any, required under said Section 103 and regulations thereunder.

Section 5.13. Payments by Lessee on Account of Loss of Tax

Exemption on Bonds. 1. The Corporation has elected, with respect to the Bonds, that the provisions of Section 103(c)(6)(D) of the Internal Revenue Code of 1954, as amended, apply. In order to effectuate such election and to continue the same in full force and effect so long as any of the Bonds shall remain Outstanding and unpaid, the Lessee agrees to cooperate with the Corporation in taking such further action and filing or causing to be filed such further or supplemental instruments, documents, statements, or reports and at such office or offices, as may from time to time be required by applicable law or regulation in connection therewith.

2. In the event that (i) capital expenditures are or have been incurred with respect to facilities and equipment, including without limitation terminals, tracks, switches, rolling stock (including locomotives and cabooses) which are located in Rhode Island or Massachusetts and the principal user of which is the Lessee (or any related person) or the Lessee (or any related person) shall acquire stock or otherwise gain control of any person, firm or corporation so as to cause such person, firm or corporation to become a related person to the Lessee, or the Lessee shall merge or consolidate with another corporation or take any other action, or (ii) any person, firm or corporation shall acquire the stock, or otherwise gain control, of the Lessee or any related person so as to make the Lessee a related person to such other person, firm or corporation, and the effect of such capital expenditures, acquisition, control, merger, consolidation or other action by the Lessee (or any related person) or such other person, firm or corporation would be to cause the interest on the Bonds (other than those held by the Lessee or any related person) to be includable in the gross income of the recipient thereof for Federal income tax purposes, the Lessee shall not later than sixty days following the

date of any such occurrence pay at one time or from time to time to the Trustee under the Indenture an amount sufficient, when added to any amount then in the Bond Fund available for the purpose, to retire and redeem all Bonds then Outstanding, at the earliest possible date at 108 % of the principal amount thereof, plus accrued interest to the redemption date. Such amount shall be applied, together with such other available moneys in the Bond Fund to such redemption of the Bonds on said redemption date. If not redeemed within four months subsequent to the Tax Incidence Date, the Bonds shall thereafter bear interest at the rate of 8 % per annum until redeemed.

3. In the event that any Bonds (except those Bonds for which notice of redemption shall have been given prior to the Tax Incidence Date) are paid at maturity or purchased by the Lessee or the Trustee or redeemed by operation of the Bond Fund or otherwise subsequent to the Tax Incidence Date without receiving payment of an amount at least equal to 108% of the principal amount thereof, plus accrued interest to the retirement date, the Lessee shall promptly pay to the Trustee an amount equal to the difference between the amounts applied to the payment, purchase or redemption of such Bonds and 8 % of the principal amount thereof, plus accrued interest to the retirement date.

4. The obligation of the Lessee to make the payments provided for in this Section 5.13 shall be absolute and unconditional to the same extent as provided in Section 3.4 of this Lease Agreement in the case of the Lessee's obligation to pay rent, and shall be subject to all of the other provisions of said Section 3.4. The failure of the Corporation to execute or deliver or cause to be delivered any documents or to take any action required under this Lease Agreement or otherwise shall not relieve the Corporation of its obligation under this Section 5.13.

5. As used in this Section 5.13, the term "related person" shall mean any person, firm or corporation constituting a related person to the

Lessee or any subsequent lessee of the Locomotives within the meaning of Section 103(c)(6)(C) of the Internal Revenue Code.

Section 5.14. Counsel's Opinion and Accountant's Certificate as to Capital Expenditures and Other Matters. 1. If at any time before the third anniversary of the date of issuance of the Bonds, the Lessee or any related person proposes to pay or incur any capital expenditure within the meaning of and with the effect contemplated by subsection 1 of Section 1 hereof in an amount exceeding \$100,000 with respect to the Locomotives or any other property of the Lessee or a related person located in Rhode Island or Massachusetts, the Lessee will, prior to the payment or incurring of such capital expenditure, file with the Trustee and the Corporation an opinion of counsel satisfactory to the Trustee to the effect that such capital expenditure will not have the effect of causing the interest on the Bonds (other than those held by the Lessee or any related person) to be included in the gross income of the recipient thereof for Federal income tax purposes. If at any time during which any of the Bonds are Outstanding, the Lessee or any related person proposes to merge or consolidate with any corporation, or gain control of any person, firm or corporation, or assume liabilities incurred in connection with facilities and equipment including without limitation terminals, tracks, switches, rolling stock (including locomotives and cabooses) located in Rhode Island or Massachusetts of another person, firm or corporation or acquire greater than 50% of the outstanding stock of another corporation, the Lessee shall first file with the Trustee and the Corporation an opinion of counsel satisfactory to the Trustee to the effect that such action would not cause the interest on the Bonds (other than those held by the Lessee or any related person) to be included in the gross income of the recipient thereof for Federal income tax purposes.

2. The Lessee will, until the end of the third full fiscal year after the date of issuance of the Bonds, keep books and records with respect to the Locomotives and any other property or facilities and equipment including without limitation terminals, tracks, switches, rolling stock (including locomotives and cabooses) located in Rhode Island or Massachusetts of which the Lessee or any related person is the principal user, which books and records shall be sufficient to indicate the nature of all expenditures with respect to the Locomotives or such property or facilities and equipment including without limitation terminals, tracks, switches, rolling stock (including locomotives and cabooses). The Lessee will cause a yearly audit for the fiscal years ending December 1974-1977 to be made of such books and records by either Lavent Krekstein Horwath and Horwath or another independent public accountant reasonably satisfactory to the Trustee. Such independent public accountant shall within 120 days after the end of such year file with the Trustee and the Corporation a certificate, which shall state that to the best of its knowledge during the preceding fiscal year neither the Lessee nor any related person has paid or incurred any expenditures of the nature specified in subsection 1 of this Section 5.14 or, in the event the Lessee or any related person has paid or incurred any such expenditure such certificate shall specify the details, including the date and amount thereof.

3. As used in this Section 5.15, the term "related person" shall mean any person, firm or corporation constituting a related person to the Lessee or any subsequent lessee of the Locomotives within the meaning of Section 103(c)(6)(C) of the Internal Revenue Code.

Section 5.15. Covenant in the Event of Default. The Lessee agrees and covenants that so long as there exists a default by it under this Lease Agreement in respect of any payment required by it to be made hereunder, the Lessee shall not

(i) declare any dividends (other than dividends payable in shares of the Lessee) on, or make any other distribution (by reduction of capital or otherwise) in respect of, any shares of any class of its capital stock; or

(ii) apply any of its property or assets to or set aside any sum for the payment, purchase or redemption or other retirement of, or permit any wholly-owned subsidiary of the Lessee to purchase, any shares of any class of capital stock of the Lessee.

ARTICLE VI

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING;
REDEMPTION OF BONDS

Section 6.1. Assignment and Subleasing. This Lease Agreement may not be assigned to any person, and the Locomotives may not be subleased as a whole or in locomotive units to any person, by the Lessee without the consent of either the Corporation or the Trustee, subject, however, to each of the following conditions:

(a) No assignment (other than pursuant to Section 5.5 hereof) or subleasing shall relieve the Lessee from primary liability for any of its obligations hereunder, and in the event of any such assignment or subleasing the Lessee shall continue to remain primarily liable for payment of all rents specified hereunder hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by it.

(b) Any assignee shall assume the obligations of the Lessee hereunder to the extent of the interest assigned.

(c) The Lessee shall, within thirty days after the delivery thereof, furnish or cause to be furnished to the Corporation and to the Trustee a true and complete copy of each such assignment and sublease, as the case may be.

Section 6.2. Restrictions on Sale of Locomotives by Corporation
Subject to the provisions of Articles VII and VIII hereof, the Corporation agrees that, except for the assignment of this Lease Agreement and the rentals hereunder to the Trustee pursuant to the Indenture, and except as permitted by Section 4.7 hereof, it will not sell, assign, convey, mortgage, encumber or otherwise dispose of the Locomotives during the Lease Term.

Section 6.3. Redemption of Bonds. The Corporation, at the request of the Lessee, shall promptly take all steps that may be necessary under the applicable provisions of the Indenture to effect redemption of all part of the then outstanding Bonds as may be specified by the Lessee, on a redemption date as may be specified by the Lessee in accordance with the Indenture. Prior to the date fixed for such redemption, the Lessee shall pay to the Trustee, as advance rental for deposit in the Bond Fund an amount sufficient (when added to any amounts available therefor then held in the Bond Fund and any Special Fund) to pay the Redemption Price for such Bonds plus interest accrued and unpaid thereon to the date of redemption.

Section 6.4. References to Bonds Ineffective After Bonds Paid. Upon payment in full (or provision for payment in accordance with the provisions of the Indenture and this Lease Agreement) of the Bonds and all fees and charges of the Trustee, any paying agent or registrar and the Corporation, all references in this Lease Agreement to the Bonds and the Trustee shall be ineffective and neither the Trustee nor the holder of any of the Bonds shall thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested.

ARTICLE VII
EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default Defined. Except as otherwise provided below in this Section 7.1, the terms "event of default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

- (a) Failure by the Lessee for a period of five days to pay or cause to be paid the rent required to be paid under Section 3.3 hereof at the times specified therein.
- (b) Failure by the Lessee to pay any amount required to be paid pursuant to Section 5.13 hereof at the time specified therein.
- (c) Failure by the Lessee to observe and perform any other covenant, condition or agreement in this Lease Agreement on its part to be observed or performed, for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, is given to the Lessee by the Corporation or the Trustee, unless the Corporation and the Trustee (with any required consent of Bondholders under the provisions of the Indenture) shall agree in writing to an extension of such time.
- (d) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Lessee under the Federal Bankruptcy Act or any other applicable Federal or State Law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order

unstayed and in effect for a period of 60 consecutive days.

(e) The institution by the Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable Federal or State law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by the Lessee in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Lessee in furtherance of any such action.

(f) The filing by the Lessee, without the express written consent of the Authorized Corporation Representative, of a petition or application with any court, the Interstate Commerce Commission, any state public service commission or any other public agency or authority having jurisdiction, seeking authorization for the discontinuance of or any substantial reduction in the frequency or quantity of the freight service provided as of the date of execution of this Lease Agreement between the points specified in Section 5.2.

(g) The filing by the Lessee of an application under Section 20 b of the Interstate Commerce Act or any similar law enacted

hereafter which application seeks any adjustment or impairment of any obligation of the Lessee contained herein.

Section 7.2. Remedies on Default. So long as any of the Bonds shall be Outstanding whenever any event of default referred to in Section 7.1 hereof shall have occurred and be subsisting, the Corporation or the Trustee may take any one or more of the following remedial steps:

(a) The Trustee as provided in the Indenture may, at its option declare the entire principal of and interest on the Bonds to be immediately due and payable, whereupon rent in an equal amount shall become immediately due and payable under this Lease Agreement, with interest thereon until the date of payment at the rate of 8% per annum.

(b) The Corporation, with the prior written consent of the Trustee, may enter on the premises of the Lessee or other premises where the Locomotives may be and repossess the Locomotives without terminating this Lease Agreement, and sublease the Locomotives for the account of the Lessee, holding the Lessee liable for the difference between the rent and other amounts payable by the sublessee and the rents and other amounts payable by the Lessee hereunder. Except as may be herein provided the Lessee waives all rights of equity of redemption, if any, all statutory and other legal notice of any kind, notice of intention to take possession of or to sell the Locomotives or any locomotive, and any other requirements with respect to the enforcement of the rights of the Corporation and Trustee hereunder.

(c) The Corporation, with the prior written consent of the Trustee may terminate the Lease Term, exclude the Lessee from possession of the Locomotives and use its best efforts to lease the Locomotives to a third party for the account of the Lessee, holding the Lessee liable for all rent

and other amounts due under this Lease Agreement and not paid by such other party.

(d) The Corporation or the Trustee may take whatever other action at law or in equity may appear necessary or desirable to collect the rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease Agreement.

Any amounts collected pursuant to action taken under this Section 7.2 shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture and this Lease Agreement.

Section 7.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation or to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this agreement or now or hereafter existing at law or in equity or by statute. The Lessee waives any defense based upon the adequacy of a remedy at law to any action for specific performance or an injunction brought against the Lessee pursuant to this Lease Agreement. The specific in any provision of this Lease Agreement that the Corporation shall be entitled to a decree against the Lessee for specific performance or an injunction, shall not be construed as an agreement that the Corporation shall not be entitled to such remedy or remedies in connection with any other provision of this Lease if, under the circumstances, the Corporation would be so entitled. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4. Obligation and Rights of Lessee in Default. Notwithstanding the foregoing, unless and until the Corporation shall have executed a firm bilateral agreement for the reletting of the Locomotives:

(a) the Lessee may, at any time, pay all accrued unpaid rentals (exclusive of any such rentals accrued solely by virtue of acceleration of maturity of the Bonds as provided in Section 701 of the Indenture) and fully cure all defaults; and

(b) in such event, this Lease Agreement shall be fully reinstated, as if it had never been terminated, and the Lessee shall be restored to the use and possession of the Locomotives.

ARTICLE VIII

OPTIONS TO PURCHASE THE LOCOMOTIVES

Section 8.1. Option to Purchase. 1. The Lessee shall have the option to purchase the Locomotives at any time if:

(a) The Locomotives or any locomotive thereof shall have been damaged or destroyed to such extent that as evidenced by a certificate of an Independent Engineer acceptable to the Trustee (such acceptance not to be unreasonably withheld) and filed with the Corporation and the Trustee (i) the Locomotives or any locomotive thereof cannot be reasonably restored within a period of six months to the condition thereof immediately preceding such damage or destruction, or (ii) the Lessee or any sublessee of the Locomotives is thereby prevented from carrying on its normal use and operation of the Locomotives for a period of six consecutive months, or (iii) the cost of restoration thereof would equal or exceed the principal amount of Bonds Outstanding; or

(b) As a result of changes in the Constitution of the United States of America or of the State of Rhode Island or of legislative or executive action of said State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court, this Lease Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein or unreasonable burdens or excessive liabilities are imposed upon the Lessee, or any sublessee of the Locomotives.

2. The Lessee shall have the additional option to purchase the Locomotives on January 1, 1984 or on any date thereafter during the term of this Lease Agreement.

3. To exercise any such option to purchase pursuant to Subject 1 or 2 of this Section 8.1, the Lessee shall give written notice to the Corp and to the Trustee, if any of the Bonds remaining outstanding, specifying therein the date of closing such purchase, which shall be not less than forty-five nor more than ninety days from the date such notice is mailed, shall file with the Corporation and the Trustee (a) the certificate of an Authorized Lessee Representative stating the applicable provision under which the Lessee is authorized to purchase the Locomotives, and certifying that the applicable condition or event required by such provision, exists, or has occurred, (b) the opinion of an Independent Engineer, if required, and (c) a certified copy of a resolution of its Board of Directors declaring its intention to exercise such option, and shall no later than the date of closing, pay to the Trustee for deposit in the Bond Fund an amount (herein after called the "purchase price") sufficient, when added to any amounts then in the Bond Fund or any Special Fund, (i) to discharge the lien of the Indenture pursuant to Section 1001 thereof, which amounts shall be applied to redemption of the Bonds on the earliest possible redemption date, and (ii) to pay all fees and expenses of the Trustee and any other registrar or paying agent accrued and to accrue through such final retirement or redemption plus (iii) one hundred dollars.

Section 8.2. Conveyance Under This Article. At the closing of purchase of the Locomotives by the Lessee pursuant to Section 8.1 hereof, the Corporation will, upon receipt of the purchase price, deliver or cause to be delivered to the Lessee (a) a release or satisfaction of the Indenture and other documents transferring and conveying to the Lessee good and merchantable title to the Locomotives, as such property then exists, and all rights, privileges and appurtenances thereto belonging or in anywise

appertaining, subject to the following: (i) any liens and encumbrances to which title to said property was subject when conveyed to the Corporation (ii) any liens and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented in writing; (iii) any liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the covenants on its part contained in this Lease Agreement; (iv) any liens for taxes or assessments or additional rentals pursuant to Section 4.2 not paid by Lessee, and (v) if option is exercised as a result of confiscation or requisition, the rights and title of the confiscating or requisitioning authority, and (b) documents releasing and conveying to the Lessee all of the Corporation's rights and interests in and to any rights of action, or any insurance proceeds or otherwise with respect to such property. Concurrently with the delivery of such title documents, there shall be delivered by the Corporation to the Trustee any instructions or other instruments required by Section 1001 of the Indenture to defease and pay the Bonds.

Section 8.3. Termination of Agreement. The Lessee shall have the following options to cancel or terminate this Lease Agreement:

- (a) At any time prior to full payment of the Bonds, the Lessee may terminate this Lease Agreement by notifying the Corporation and the Trustee of such termination and concurrently paying to or depositing with the Trustee, as advance rental, moneys or obligations of or guaranteed by the United States of America which with interest payable on such obligations, when added to other amounts (including other such obligations with interest payable thereon) on deposit in the Bond Fund, will be sufficient to pay the principal or Redemption Price, if applicable, of, and interest on the Outstanding Bonds when due or to become due in accordance with their terms and the terms of the Inden-

ture, whether upon redemption on such dates, in whole or in part, or by operation of Sinking Fund Installments or at maturity, or any combination of the foregoing, as shall be specified in Lessee's notice of termination and as shall have the effect of discharging the lien of the Indenture;

(b) After full payment of the Bonds, the Lessee may terminate this Lease Agreement by giving the Corporation ten (10) days notice in writing.

Upon expiration of the Lease Term, exercise of Lessee's option to purchase the Project pursuant to Section 8.1 or termination of this Lease Agreement pursuant to this Section 8.3,

(1) if the Lessee so elects by giving written notice to the Corporation, the Corporation will transfer and convey to Lessee the Locomotives, and rights, privileges and appurtenances thereto belonging or in any wise appurtenant as provided in Section 8.2 against receipt from Lessee of the amounts referred to in clause (ii) of Section 8.1.3 (or an undertaking, in form and substance satisfactory to the Corporation and the Trustee, to pay the same) plus the sum of one hundred dollars; and

(2) this Lease Agreement and all obligations of the Lessee hereunder except as set forth in Sections 3.3(e), 5.6, 5.11, 5.13, 6.3 and this Section 8.3 shall be terminated.

Section 8.4. Extensions of Lease Term. If the Lessee is not in default under this Lease Agreement, the Lessee may extend the term of this Lease for such period as may be agreed upon between the Corporation and the Lessee upon the terms and conditions provided for in Articles III through IX of this Lease Agreement, except that (a) the annual basic rental shall be such amount as may be agreed upon between the Corporation and the Lessee.

(b) the Lessee shall not be obligated to maintain the insurance required in Section 4.3, (c) any Net Proceeds shall, instead of being applied in the manner provided for in Sections 4.3 and 4.5, to be paid to the Lessee, and (d) during any such extended term or extended terms the Lessee shall pay to each levying body having jurisdiction of the Locomotives the full amount which would be payable as taxes levied by each such levying body on the Locomotives if the Lessee then owned and held the title to the Locomotives

ARTICLE IX

MISCELLANEOUS

Section 9.1. Indenture; Amendment. Moneys received from the sale of the Bonds and all rentals paid by the Lessee and all other moneys received by the Corporation or the Trustee in connection with the Locomo shall be applied solely and exclusively in the manner and for the purposes expressed and specified in the Indenture and in the Bonds and in this Lease Agreement. The Lessee shall have and may exercise all the rights, power and authority stated to be in the Lessee in the Indenture and in the Bonds, and the Indenture and the Bonds shall not be modified, altered or amended in any manner without the written consent of the Lessee.

Section 9.2. Option to Purchase or Invite Tenders of Bonds. The Lessee shall have the option, at any time during the term of this Lease Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Corporation shall at all times make available or cause to be made available to the Lessee its registration books (maintained at the principal office of the Trustee) containing the names and addresses of the holders of the bonds.

Section 9.3. Benefit of and Enforcement by Bondholders. The Corporation and the Lessee agree that this Lease Agreement is executed in part to induce the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Corporation and the Lessee as set forth in this Lease Agreement are hereby declared to be for the benefit of the holders from time to time of the Bonds and may be enforced as provided in Article VII of the Indenture on behalf of such bondholders by the Trustee.

Section 9.4. Amendments. This Lease Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Trustee given in accordance with the provisions of the Indenture and then only if the Lessee shall assume the obligations of such amended Lease Agreement.

Section 9.5. Notices. All notices, requests, consents, certificates and other communications hereunder shall be sufficient if deposited in the United States registered mail, return receipt requested, postage prepaid, addressed, if to the Corporation, Attention: Chairman, Roger Williams Building, Hayes Street, Providence, Rhode Island 02908; and if to the Lessee, to the President, Providence and Worcester Company, East Providence, Rhode Island; and if to the Trustee, at its then principal corporate trust office, or to such other address as the Corporation, the Lessee, or the Trustee, may designate by like notice to the others.

Section 9.6. Confidential Information. Nothing contained in this Lease Agreement shall be deemed to require the Lessee to disclose to the Corporation, the Trustee or others (a) any trade secrets of the Lessee, or (b) any other confidential processes, techniques or information which the Lessee is not free to disclose, whether by virtue of any applicable statute, governmental security regulation, technical assistance agreement, patent license or similar agreement relating to the acquisition or interchange of technology or otherwise.

Section 9.7. Prior Agreements Superseded. This Lease Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Corporation and the Lessee relating to the Locomotives.

Section 9.8. Severability. If any clause, provision or Section of this Lease Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

Section 9.9. Recording. 1. This Lease Agreement shall be filed and recorded by the Lessee with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and in such other office as may at the time be provided by law as the proper place for the recordation hereof. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by the Corporation, for the purpose of proper protection, to the satisfaction of the Corporation and Trustee, of its title Locomotives, or for the purpose of carrying out the intention of this Lease Agreement. The Lessee will pay all costs, charges, and expenses incident to the filing, re-filing, registering, re-registering, recording and re-recording of the Lease Agreement and any such further instrument or incident to the taking of any such further action.

2. The Lessee shall prepare and duly cause to be recorded schedules listing all of the items owned by the Corporation and installed in the Locomotives and not previously described in this Lease Agreement in to fully describe the property owned by the Corporation and installed as part of the Locomotives, upon request by the Corporation or the Trustee given 60 days after the end of any calendar year; provided that the Corporation and the Trustee shall execute and deliver all instruments and shall furnish all information necessary in connection with the foregoing.

Section 9.10. Opinions of Counsel. Concurrently with the execution and delivery of this Lease Agreement, the Lessee will deliver to the Corporation the written opinion of Independent Counsel, in scope and substance satisfactory to the Corporation, to the effect

(a) that if this Lease Agreement is filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, as amended, it need not, in order to protect the Corporation's title to the Locomotives, be otherwise filed, deposited, registered or recorded under the provisions of any other law of the United States of America or of any State (or of any political subdivision thereof) respecting the filing, depositing, registration or recordation of said Lease Agreement;

(b) that no approval is required from any public regulatory body with respect to the entering into or performance of this Lease Agreement by the Lessee; and

(c) that to the best knowledge of such counsel the entering into and performance of this Lease Agreement will not result in any breach of or constitute a default under any obligation to which the Lessee is a party or by which it may be bound.

Section 9.11. Investment Tax Credit. It is the intention of the parties that any investment tax credit or comparable credit which may ever be available accrue to the benefit of the Lessee and the Corporation shall the Lessee upon advice of counsel, may make any election and take other action in accordance with the Internal Revenue Code and the regulations promulgated thereunder as may be necessary to entitle the Lessee to have such benefit.

Section 9.12. Effective Date; Counterparts. This Lease Agreement shall become effective upon its delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.13. Binding Effect. This Lease Agreement shall inure to the benefit of, and shall be binding upon, the Corporation, the Lessee, the Trustee and their respective successors and assigns.

Section 9.14. Net Lease. This Lease Agreement shall be deemed and construed to be a "net lease", and the Lessee shall pay absolutely net during the Lease Term the rent and all other payments required hereunder free of any deductions, without abatement, diminution or set-off other than those herein expressly provided.

Section 9.15. Law Governing. This Lease Agreement shall be governed by, and construed in accordance with, the laws of the State of Rhode Island.

IN WITNESS WHEREOF, the Corporation and the Lessee have caused this Lease Agreement to be signed and sealed in their behalf by their duly authorized representatives as of the date first written above.

RHODE ISLAND INDUSTRIAL FACILITIES CORPORATION

[Corporate Seal]

By Adolph T. Adams
Chairman

Attest:

Joseph R. DiStefano
Clerk
Secretary

PROVIDENCE AND WORCESTER COMMERCE BANK

[Corporate Seal]

By Robert W. Edge
President

Attest:

Joseph R. DiStefano
Secretary

STATE OF *Rhode Island*)
COUNTY OF *Providence*) SS.:

On this *28th* day of *January*, 197*8*⁴, before me, a notary public in and for said state and county, personally appeared *Adolph T. Schmidt* and *V. James Santamello*, both to me personally known, who being by me duly sworn did say that they are the Chairman and Secretary, respectively, of Rhode Island Industrial Facilities Corporation; that the seal affixed to the foregoing instrument is the seal of the said Corporation, and that said instrument was signed and sealed on behalf of the said Corporation by authority of its *directors*, and the said *Adolph T. Schmidt* and *V. James Santamello* acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed.

Susan G. Taylor
Notary Public

My Commission Expires
June 1, 1979

STATE OF *Rhode Island*)
COUNTY OF *Providence*) SS. :

On this *29th* day of *January*, 197*3*, before me, a notary public in and for said state and county, personally appeared *Robert H. Eden* and *Joseph R. D. Stephens*, both to me personally known, who being by me duly sworn did say that they are the President and Secretary, respectively, of Providence and Worcester Company; that the seal affixed to the foregoing instrument is the seal of the said Company, and that said instrument was signed and sealed on behalf of the said Company by authority of its *Board of Directors*, and the said *Robert H. Eden* and *Joseph R. D. Stephens* acknowledged the execution of said instrument to be the voluntary act and deed of said Company by it voluntarily executed.

Shirley G. Finn
Notary Public

My Commission Expires
June 30, 1975